CTA TERMS AND CONDITIONS (UNIFORM TO MOST CLICK-THROUGH AGREEMENTS)

Disclaimer of Warranties: Vendor disclaims (i.e., denies any claim to or connection with) all warranties and provides the product “AS IS.” Warranties that are disclaimed include:

- implied warranty of merchantability (product will perform as stated)
- fitness for a particular purpose (product will perform the function stated)
- non-infringement (vendor is not copying someone else’s product)
- title (vendor owns the product)
- quiet enjoyment (use of the product will not result in litigation)
- quality of information (product will generate correct data)
- security (use of the product poses no risk to data)
- reliability (product will perform)
- timeliness (product/service will be available)
- availability of data (data inputted into the program/service will be retrievable)

Explanation: Normally when you make a purchase, the manufacturer or seller makes an important promise to stand behind the product. It’s called a warranty. Federal law requires that warranties be available for you to read before you buy, even when you are buying on the Internet. In the absence of a disclaimer the buyer/user is entitled to all the warranties. In order for the vendor to limit their own liability, the vendor disclaims all the warranties granted by the law. The buyer/user contractually agrees to give up their legal rights regarding the warranties when the buyer/user clicks “I agree.”

Limitation of Liability: The vendor limits their exposure from a lawsuit to the cost of the software/service provided. In the case of mere registrations the limitation on liability is zero.

Explanation: A limitation of liability clause is a contractual provision that restricts the amount of damages a buyer/user can recover from a vendor. The provision provides protection to the vendor against contractual breaches and negligence caused by the vendor and allocates risk to the buyer/user. If the software/service purchased through a CTA is defective, causes damage (i.e., corruption or loss of data) or is breached by the vendor, the buyer/user damages are limited to the price of the software/service. This is particularly onerous when the software/service is inexpensive but the data lost is unique.

Indemnification: The vendor requires the User to indemnify, hold harmless and defend the vendor against any and all claims arising out of or related to your use of the software or service.

Explanation: Nearly every CTA contains an indemnity clause. These clauses are so common, that many don’t even read them, assuming that they are inconsequential boilerplate. Nothing could be further from the truth. Primarily, an indemnification clause in a contract addresses which party will be liable in the event a problem arises. An indemnification provision in a contract provides for one party to compensate the other party for any harm, liability, or loss arising out of the contract. Indemnification clauses shift risk. The vendor shifts the risk to the buyer/user. For example, if the vendor is sued, by a third party, for selling the software/service to the buyer/user, an indemnification clause provides that the buyer/user...
shall defend and hold harmless the vendor from any and all claims, demands, losses, causes of action, damage, lawsuits, judgments, including attorneys' fees and costs, arising out of or relating to the software/service. So as a practical matter the buyer/user pays the vendor for the software/service and agrees to defend the vendor from any claim made against the vendor regarding the use of the software/service.

**Limitation of Damages:** The vendor limits its damages to direct damages only. No indirect, incidental, consequential, special, punitive, exemplary or extra-contractual damages can be claimed.

Explanation: In the event that the vendor’s software/service causes the buyer/user harm, the buyer/user is limited to collect only direct damages, the cost of the software/service. For example, if a software/service provides the buyer/user with web space, and all the data stored by the buyer/user on the web space is lost or corrupted, the buyer/user is only entitled to the cost of the web space as a remedy. If the cost to recreate the data lost exceeds the cost of the web space, then the buyer/user must pay and the vendor has no further responsibility.

**Jurisdiction and Venue:** The vendor requires that interpretation and enforcement of the CTA occur in their home jurisdiction, not in Allegheny County, Pennsylvania.

Explanation: Most CTAs are interpreted by the law of the vendor’s place of business. If the vendor is not in Pennsylvania any dispute would be reviewed in another state or country, adding costs to the process for the buyer/user.